

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

**PATRICK CHAVEZ, TODD BARTLETT,
JEANNINE CHAVEZ, RUDY CAMPOS,
MICHAEL COCCHIOLA, ROBERT
GUTIERREZ, FORTINO ORTEGA, and
MICHAEL TOYA, on behalf of them-
selves and all other City employees who have
been paid overtime that was improperly
determined under 29 U.S.C.A. Sec. 207(a)(1),**

Plaintiffs,

vs.

No. CIV-02-0562 JH/ACT

CITY OF ALBUQUERQUE,

Defendant.

NOTICE OF COLLECTIVE ACTION

TO: All persons employed by the City of Albuquerque in the three years prior to filing the consent form, who have worked overtime (hours in excess of the 40-hour weekly standard or other applicable regular work period standard) but whose overtime pay has not been correctly calculated or paid because the City:

- 1) failed to include add-ons such as longevity pay, shift differential pay, hazardous duty pay, bonuses, and other required augmentation in the base rate of pay;
- 2) incorrectly took credits or offsets against overtime pay; and/or
- 3) used an erroneous divisor and/or multiplier to calculate overtime pay.

**THIS NOTICE MAY AFFECT YOUR LEGAL RIGHTS;
PLEASE READ THE ENTIRE NOTICE CAREFULLY.**

1. Introduction

The purpose of this Notice is to advise you that there is currently pending in the United States District Court for the District of New Mexico a collective (“class”) action Fair Labor Standards Act (FLSA) lawsuit which may affect the rights of any person employed (or formerly-employed) by the City of Albuquerque who received overtime pay in the applicable time period, and to advise you how to join this lawsuit if you wish to do so and what obligations you may incur if you decide to join the lawsuit.

2. Description of the Lawsuit

Patrick Chavez, a Lieutenant in the City’s Fire Department, filed this collective (class) action lawsuit in the United States District Court for the District of New Mexico in May, 2002, and all proceedings in the lawsuit are being conducted in Albuquerque. In 2004 and again earlier this year Plaintiffs amended the Complaint to include employees from other Departments as named-Plaintiff-Representatives. To this date, more than 350 employees have “opted in” to the lawsuit by signing and filing consent forms.

In his Complaint, Patrick Chavez contended that the City of Albuquerque violated the Fair Labor Standards Act (FLSA) by failing to properly compute the overtime compensation due to City employees who worked more than 40 hours per week and who received, in addition to their regular hourly wage, other compensation such as pay for shift differentials, hazardous duty, longevity, super-longevity, holidays, bilingual, education, or firearms qualification. Other payments received by City employees in addition to their base rate of pay, such as the bonus awarded by the City are also alleged to be properly included in the calculation of overtime pay rates.

In addition, Plaintiffs contend that the City is miscalculating or failing to properly pay overtime wages by taking offsets and credits against overtime wages, and by using an incorrect formula for computation of overtime wages.

The City has denied that it violated the law and asserts that its calculations of the regular rate of pay and overtime pay are correct.

The Court has ordered that this Notice be sent to you because it is believed that you may be affected by the litigation and outcome of the case. The Court has not yet ruled on the merits of any of the claims or defenses raised by either side, and this Notice should not be interpreted as an indication of how the Court may rule in the future. The Court has not expressed any opinion about whether you should or should not join this lawsuit.

If the alleged violations of the FLSA are proved true, the Plaintiffs seek to recover unpaid overtime wages, liquidated damages or interest, attorney's fees, and costs of the litigation. No money can be collected on your behalf and you will not be represented in this case unless you decide to "opt in" as a class member. Because the decision to opt in as a class member will also impose upon you certain obligations, you should read this entire Notice carefully before making your decision on whether or not to "opt in."

3. Rights and Obligations of Class Members

A. Right to be Represented

If you choose to become a member of the class and choose to be represented by the class representatives, you will be represented by **Sam Bregman** and the Law Offices of Sam Bregman and by **Paul Livingston**. These attorneys will represent you in all matters in the case. The addresses and telephone numbers for these attorneys appear later in this Notice, and you may contact them at any time to seek their counsel.

If you choose to be in the case and are represented by these attorneys they will represent you on a ten percent (10%) contingent fee basis. This means that ten percent of any amount recovered on your behalf, and on behalf of each other class member, will be paid to Class Counsel as compensation for their services. If these attorneys are unsuccessful in representing you, you will not be charged any attorney's fees, although the adverse judgment will be binding upon you, and you will not be able to file your own lawsuit concerning the matters in this lawsuit in the future.

B. Other Rights and Obligations

i. You may be asked to provide information regarding your compensation and hours worked while employed by the City of Albuquerque as well as other information relating to your claims. You may also be asked or required to appear to give deposition and/or trial testimony in this case.

ii. If you become a member of the class and no recovery is obtained, you will be bound by that result and will not be able to file your own lawsuit concerning these matters in the future.

iii. If you become a member of the class you should preserve any documents you may have related to the number of hours you worked and the amount of compensation you received. If you do not have any such docu-

ments, however, this will not necessarily affect your claim as the City of Albuquerque is required to maintain records and supply information related to these matters.

iv. You will be entitled to notice of any Court ruling in this matter, and you will be entitled to an opportunity to be heard respecting any proposed settlement or dismissal of the class claims. For this reason you will be required to keep your counsel advised of your current address and telephone number.

4. Election to Opt In to this Lawsuit

If you worked for the City of Albuquerque in the applicable period and received incorrectly calculated overtime pay during any pay period(s) you have the right to choose whether or not to participate in this Collective Action.

You should carefully review the rights and obligations of members of the class set out above, including the terms of compensation of counsel and the binding effect of any judgment or settlement on class members before making your choice.

If you have previously opted in to the case, you are already included and don't need to do anything at this time.

If you wish to be **included** in the class, you must complete the enclosed "Notice of Consent." The completed form should be returned to one of the attorneys for filing with the Court.

THE CONSENT FORM MUST BE SIGNED AND MAILED OR DELIVERED SO AS TO ALLOW TIME FOR IT TO BE FILED WITH THE COURT WITHIN NINETY (90) DAYS AFTER THE MAILING OR DISTRIBUTION OF THIS NOTICE

If you **do not wish to be included** in this lawsuit, you do not have to do anything. If you do nothing and do not opt in you will be permitted to pursue your own claim or lawsuit.

5. Additional Information

A. The documents filed in this case are a matter of public record, filed with the Clerk of the Court for the United States District Court for the District of New Mexico. You may review the case filings at the Clerk's office located at 333 Lomas Blvd., NW, Albuquerque, NM.

B. You may also review the documents filed in this case at one of the Plaintiffs' counsel's website: <http://www.abqgov.com/>

C. Any questions that you may have concerning this Notice, and any changes to your e-mail address, address, or telephone number, should not be directed to the Court, but should be provided to your legal representative. Additionally, if you decide to become a member of the class, and you wish to communicate with your representative, you may do so in writing, by e-mail, or by telephone:

Sam Bregman
111 Lomas Blvd. NW, Suite 230
Albuquerque, NM 87102
e-mail tblf@bregmanlawfirm.com
(505) 761-5700 or 761-8280 (fax)

or

Paul Livingston
P.O. Box 250
Placitas, NM 87043
e-mail paul@abqgov.com
(505) 771-4000 or 771-2333 (fax)

This Notice and its contents have been authorized by the U.S. District Court for the District of New Mexico, but the Court has taken no position on the merits of the case. The Court cannot advise you whether or not to participate in the case or who should represent you. Whether or not to participate in this case is a personal decision to be made by each individual member of the class.

If you do decide to become a member of the class, please remember that the Court has set a time limit for your submission of the opt-in consent form. You will not be included in the class unless you return the enclosed Notice of Consent to be Represented in time for it to be filed with the Court no later than ninety (90) days after the mailing or distribution of this Notice.

The date of mailing or distribution of this Notice is _____.

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Plaintiffs,

vs.

No. CIV-02-0562 JH/ACT

CITY OF ALBUQUERQUE,

Defendant.

CONSENT TO BE REPRESENTED

I, _____, hereby consent to opt in to the above-
(Please Print Name)

captioned FLSA collective action lawsuit and to be represented by attorneys Sam Bregman and Paul Livingston.

Name (Please Print) _____

Home Address _____

Phone No./ e-mail _____

City Department _____

Signature of Opt-In Class Member

Date Signed